

1 HAL CUNNINGHAM (#243048)
2 SCOTT+SCOTT, ATTORNEYS AT LAW, LLP
3 707 Broadway, Suite 1000
4 San Diego, California 92101
5 Telephone: (619) 233-4565
6 Facsimile: (619) 233-0508
7 Email: hcunningham@scott-scott.com
8 -and-
9 DEBORAH CLARK-WEINTRAUB
10 JOSEPH P. GUGLIELMO
11 THOMAS L. LAUGHLIN IV
12 SCOTT+SCOTT, ATTORNEYS AT LAW, LLP
13 The Chrysler Building
14 405 Lexington Avenue, 40th Floor
15 New York, New York 10174
16 Telephone: (212) 223-6444
17 Facsimile: (212) 223-6334
18 Email: dweintraub@scott-scott.com
19 Email: jguglielmo@scott-scott.com
20 Email: tlaughlin@scott-scott.com

21 *Attorneys for Lead Plaintiffs*

22
23 UNITED STATES DISTRICT COURT
24 NORTHERN DISTRICT OF CALIFORNIA
25 OAKLAND DIVISION

26 WILLARD A. SHARRETTE, DAVID
27 GOLDMAN, and
28 ESTA GOLDMAN, Individually and on
Behalf of All Others Similarly Situated,

Plaintiffs,

v.

CREDIT SUISSE INTERNATIONAL, a
foreign company, CREDIT SUISSE
SECURITIES (USA) LLC, a Delaware
limited liability company, and DOES 1-100,

Defendants.

Case No. 4:13-cv-02783-SBA

**CONSOLIDATED AMENDED
COMPLAINT**

Hon. Sandra Brown Armstrong

29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47
48
49
50
51
52
53
54
55
56
57
58
59
60
61
62
63
64
65
66
67
68
69
70
71
72
73
74
75
76
77
78
79
80
81
82
83
84
85
86
87
88
89
90
91
92
93
94
95
96
97
98
99
100
101
102
103
104
105
106
107
108
109
110
111
112
113
114
115
116
117
118
119
120
121
122
123
124
125
126
127
128
129
130
131
132
133
134
135
136
137
138
139
140
141
142
143
144
145
146
147
148
149
150
151
152
153
154
155
156
157
158
159
160
161
162
163
164
165
166
167
168
169
170
171
172
173
174
175
176
177
178
179
180
181
182
183
184
185
186
187
188
189
190
191
192
193
194
195
196
197
198
199
200
201
202
203
204
205
206
207
208
209
210
211
212
213
214
215
216
217
218
219
220
221
222
223
224
225
226
227
228
229
230
231
232
233
234
235
236
237
238
239
240
241
242
243
244
245
246
247
248
249
250
251
252
253
254
255
256
257
258
259
260
261
262
263
264
265
266
267
268
269
270
271
272
273
274
275
276
277
278
279
280
281
282
283
284
285
286
287
288
289
290
291
292
293
294
295
296
297
298
299
300
301
302
303
304
305
306
307
308
309
310
311
312
313
314
315
316
317
318
319
320
321
322
323
324
325
326
327
328
329
330
331
332
333
334
335
336
337
338
339
340
341
342
343
344
345
346
347
348
349
350
351
352
353
354
355
356
357
358
359
360
361
362
363
364
365
366
367
368
369
370
371
372
373
374
375
376
377
378
379
380
381
382
383
384
385
386
387
388
389
390
391
392
393
394
395
396
397
398
399
400
401
402
403
404
405
406
407
408
409
410
411
412
413
414
415
416
417
418
419
420
421
422
423
424
425
426
427
428
429
430
431
432
433
434
435
436
437
438
439
440
441
442
443
444
445
446
447
448
449
450
451
452
453
454
455
456
457
458
459
460
461
462
463
464
465
466
467
468
469
470
471
472
473
474
475
476
477
478
479
480
481
482
483
484
485
486
487
488
489
490
491
492
493
494
495
496
497
498
499
500
501
502
503
504
505
506
507
508
509
510
511
512
513
514
515
516
517
518
519
520
521
522
523
524
525
526
527
528
529
530
531
532
533
534
535
536
537
538
539
540
541
542
543
544
545
546
547
548
549
550
551
552
553
554
555
556
557
558
559
560
561
562
563
564
565
566
567
568
569
570
571
572
573
574
575
576
577
578
579
580
581
582
583
584
585
586
587
588
589
590
591
592
593
594
595
596
597
598
599
600
601
602
603
604
605
606
607
608
609
610
611
612
613
614
615
616
617
618
619
620
621
622
623
624
625
626
627
628
629
630
631
632
633
634
635
636
637
638
639
640
641
642
643
644
645
646
647
648
649
650
651
652
653
654
655
656
657
658
659
660
661
662
663
664
665
666
667
668
669
670
671
672
673
674
675
676
677
678
679
680
681
682
683
684
685
686
687
688
689
690
691
692
693
694
695
696
697
698
699
700
701
702
703
704
705
706
707
708
709
710
711
712
713
714
715
716
717
718
719
720
721
722
723
724
725
726
727
728
729
730
731
732
733
734
735
736
737
738
739
740
741
742
743
744
745
746
747
748
749
750
751
752
753
754
755
756
757
758
759
760
761
762
763
764
765
766
767
768
769
770
771
772
773
774
775
776
777
778
779
780
781
782
783
784
785
786
787
788
789
790
791
792
793
794
795
796
797
798
799
800
801
802
803
804
805
806
807
808
809
810
811
812
813
814
815
816
817
818
819
820
821
822
823
824
825
826
827
828
829
830
831
832
833
834
835
836
837
838
839
840
841
842
843
844
845
846
847
848
849
850
851
852
853
854
855
856
857
858
859
860
861
862
863
864
865
866
867
868
869
870
871
872
873
874
875
876
877
878
879
880
881
882
883
884
885
886
887
888
889
890
891
892
893
894
895
896
897
898
899
900
901
902
903
904
905
906
907
908
909
910
911
912
913
914
915
916
917
918
919
920
921
922
923
924
925
926
927
928
929
930
931
932
933
934
935
936
937
938
939
940
941
942
943
944
945
946
947
948
949
950
951
952
953
954
955
956
957
958
959
960
961
962
963
964
965
966
967
968
969
970
971
972
973
974
975
976
977
978
979
980
981
982
983
984
985
986
987
988
989
990
991
992
993
994
995
996
997
998
999
1000

1 **I. INTRODUCTION**

2 1. Lead Plaintiffs Willard A. Sharrette, David Goldman, and Esta Goldman
3 (“Plaintiffs”) bring this class action pursuant to §§9 and 10(b) of the Securities Exchange Act of
4 1934 (the “Exchange Act”) on behalf of themselves and on behalf of all other persons or entities
5 who purchased or otherwise acquired common stock of Energy Conversion Devices, Inc.
6 (“ECD”) between June 18, 2008 and February 14, 2012 (the “Class Period”).

7 2. This case arises out of a fraudulent scheme perpetrated by Defendants Credit
8 Suisse International and Credit Suisse Securities (USA) LLC (collectively “Credit Suisse”) and a
9 group of predatory hedge funds to mislead investors and artificially drive down the price of ECD
10 common stock. This scheme caused ECD investors astronomical losses and contributed to
11 ECD’s bankruptcy in February 2012.

12 3. In June 2008, investment bank Credit Suisse was the lead underwriter for two
13 offerings of ECD securities that were made in tandem. The principal offering, ostensibly, was
14 \$316 million in notes convertible into ECD common stock (the “Convertible Notes Offering”).
15 A convertible note is a type of hybrid security that bears characteristics of both stocks and bonds.
16 Like bonds, convertible notes pay interest (in this case 3%) and have a maturity date (here, June
17 15, 2013). At the same time, like stock, the price of convertible notes is more sensitive to the
18 earnings prospects of the issuer than an ordinary bond because each note can be converted into
19 equity. The second securities offering was of 4,714,975 shares of ECD common stock (the
20 “Stock Offering”). Through the Stock Offering, ECD created a pool of 3,444,975 shares that
21 were made available to Credit Suisse to lend out pursuant to a share lending agreement (“Share
22 Lending Agreement”).¹

23 4. The offering documents falsely represented that the purpose of the Stock
24 Offering, and the attendant share lending arrangement, was to promote the sale of the
25 Convertible Notes by assisting investors in “hedging” their investment in these securities. A

26 ¹ The remainder of the ECD shares, approximately 1.3 million shares, were sold directly to
27 investors.
28

1 hedge is an offsetting investment that limits the downside risk of a principal investment. The use
2 of the term “hedge” in the context of convertible notes specifically refers to a market neutral
3 investment strategy whereby an investor buys convertible notes and limits the downside risk in
4 the price of the notes by shorting the common stock of the company. According to the offering
5 documents, the pool of ECD stock created in the Stock Offering was to be lent out by Credit
6 Suisse to investors in the Convertible Notes solely for the purpose of facilitating such hedging.
7 Indeed, the Share Lending Agreement expressly provided that these shares would be used “solely
8 for the purpose of . . . facilitating the sale and the hedging of the Convertible Notes.”

9 5. Contrary to these representations, however, the purpose of the simultaneous and
10 contingent Convertible Note and Stock Offerings was not to permit investors in the Convertible
11 Notes to engage in market neutral hedging, but rather to allow predatory hedge funds that
12 purchased the Notes to make huge, coordinated, short sales of ECD stock in order to decimate
13 the price of ECD stock and reap huge profits from these short positions. As detailed herein,
14 Credit Suisse was the architect of and key participant in this manipulative scheme. Credit
15 Suisse solicited the participation of the hedge funds, fully aware of their intentions to drive down
16 the price of ECD stock through massive short selling, and structured the two offerings to enable
17 the hedge funds to make huge short sales of ECD stock without having to incur the normal risks
18 associated with such trading.

19 6. A short sale is a bet against a company’s stock whereby an investor borrows the
20 stock from a third party, sells the stock, which puts downward pressure on the stock price, and
21 makes a promise to return the stock to the lender at a later date. If the stock price goes down, the
22 investor buys the stock at the new, lower, price and returns the stock to the lender, pocketing the
23 difference between the two prices. There are two significant risks that limit investors’ ability to
24 make short sales in the ordinary course, however, both of which Credit Suisse knowingly
25 eliminated to facilitate the manipulation of ECD stock. First, an investor must pay a fee to the
26 lender to borrow the stock in order to short it, which can be quite high, especially as interest in
27 shorting a stock increases. Second, a short sale exposes an investor to potentially unlimited
28

1 downside risk in that there is theoretically no limit to how high the price of a shorted stock can
2 rise, and the short seller is obligated to purchase the stock at the prevailing market price on the
3 agreed date and return it to the lender.

4 7. These risks – which normally limit the downward pressure short sellers can place
5 on a stock – were nonexistent in this case. To eliminate the risk that would otherwise have
6 existed with respect to the cost of borrowing ECD stock, the Share Lending Agreement provided
7 that Credit Suisse would lend the hedge funds ECD stock to short for a nominal fee of 1 cent, far
8 below market rates. Further, the conversion option embedded in the Convertible Notes removed
9 the risk from a rising stock price because if the price of ECD stock rose sharply, the hedge funds
10 could convert their Notes into ECD stock to cover their short positions without paying the higher
11 market price. Thus, through the scheme set up by Credit Suisse, these hedge funds effectively
12 had insurance on their short positions.

13 8. With the advantages created by Credit Suisse's scheme, the hedge funds were
14 able to short ECD stock with impunity and did so by placing large, essentially riskless negative
15 bets with the cheap pool of shares provided by Credit Suisse pursuant to the Share Lending
16 Agreement. As Credit Suisse and its hedge fund clients knew and intended, this massive,
17 coordinated borrowing of ECD shares under the Share Lending Agreement and accompanying
18 short selling was far in excess of anything that could legitimately be described as a "hedge" on
19 the Convertible Notes. To the contrary, it was an intentional, manipulative scheme to realize
20 massive returns that were not available through a conventional hedged investment in convertible
21 notes.

22 9. The unrestrained short selling orchestrated by Credit Suisse and the hedge funds
23 had predictable results, driving the price of ECD common stock down from approximately \$72
24 per share on June 18, 2008, to less than \$1 in February 2012, when ECD filed for bankruptcy
25 protection, causing massive losses to investors. Credit Suisse and its hedge fund clients, on the
26 other hand, reaped enormous profits.

27 **II. PARTIES**
28

1 10. Lead Plaintiff Willard Sharrette is an individual residing in Michigan who
2 purchased ECD common stock on multiple occasions during the Class Period. Mr. Sharrette's
3 certification detailing his transactions in ECD stock during the Class Period was previously
4 submitted to the Court as ECF No. 24-2.

5 11. Lead Plaintiff David Goldman is an individual residing in New York who
6 purchased ECD common stock on multiple occasions during the Class Period. Mr. Goldman's
7 certification detailing his transactions in ECD stock during the Class Period was previously
8 submitted to the Court as ECF No. 24-2.

9 12. Lead Plaintiff Esta Goldman is an individual residing in New York who
10 purchased ECD common stock on multiple occasions during the Class Period. Ms. Goldman's
11 certification detailing her transactions in ECD stock during the Class Period was previously
12 submitted to the Court as ECF No. 24-2.

13 13. Defendant Credit Suisse International is an unlimited liability company domiciled
14 in the United Kingdom, doing business in the United States.

15 14. Defendant Credit Suisse Securities (USA) LLC is a Delaware limited liability
16 company headquartered in New York, New York. Credit Suisse Securities (USA) LLC acted as a
17 managing underwriter in the June 18, 2008 offering alleged herein. Both Credit Suisse entities
18 were parties to the Share Lending Agreement described in the Common Stock Prospectus and the
19 "3.00% Convertible Senior Notes due 2013" Prospectus Supplement filed with the United States
20 Securities and Exchange Commission ("SEC") and dated June 18, 2008 ("Convertible Note
21 Prospectus"). The Credit Suisse Defendants prepared and/or substantially contributed to the
22 misleading statements in the Common Stock and Convertible Note Prospectuses as alleged
23 herein.

24 15. Defendants Credit Suisse International and Credit Suisse Securities (USA) LLC
25 shall be referred to together as "Credit Suisse."

26 16. Credit Suisse benefited in two ways from the scheme alleged herein. First, Credit
27 Suisse was paid a share of the \$8.25 million commission for underwriting the Convertible Note
28

Offering. Second, Credit Suisse was able to promote itself to hedge funds by helping them gain exorbitant profits through the short selling scheme Credit Suisse operated. Investment banks, such as Credit Suisse, competed heavily for the approximately \$4 billion in brokerage fees paid to investment banks by hedge funds by providing these funds with access to information and favorable investment options. The short selling scheme Credit Suisse devised was an attractive investment option that allowed Credit Suisse to strengthen its brand name in the lucrative hedge fund brokerage fee market.

17. Plaintiffs are unaware of the true names and capacities of those defendants sued herein as Does 1 through 100, inclusive and therefore, sue these defendants by such fictitious names. These Doe Defendants are hedge funds that engaged in short selling of ECD common stock as alleged herein. Plaintiffs will seek leave of Court to amend this Complaint when such names are ascertained.

III. JURISDICTION AND VENUE

18. The claims asserted herein arise under and are pursuant to §§9 and 10(b) of the Exchange Act and Rule 10b-5 promulgated thereunder.

19. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§1331 and 1337, and §27 of the Exchange Act.

20. Venue is proper in this District pursuant to §27 of the Exchange Act and 28 U.S.C. §1391(b).

21. In connection with the acts, statements, and other wrongful conduct alleged in this Complaint, Defendants, directly or indirectly, used the means and instrumentalities of interstate commerce, including but not limited to the mails, interstate telephone communications and the facilities of the national securities markets and exchanges.

IV. SUBSTANTIVE ALLEGATIONS

A. Energy Conversion

22. ECD was a pioneering manufacturer of solar power technology, specifically, photovoltaic solar laminates that generated clean, renewable energy by converting sunlight into

1 electricity. ECD's solar laminates had unique characteristics that differentiated them from
 2 conventional crystalline solar modules, including physical flexibility, light weight, high
 3 durability and ease of installation. These characteristics made ECD's products particularly
 4 suitable for rooftop application, ECD's target market. ECD manufactured its solar laminates
 5 using a proprietary process and technology that it developed through nearly 30 years of research.

6 **B. Credit Suisse Misleads Energy Conversion Into a Financing Scheme That Was**
 7 **Secretly Designed By Credit Suisse and Its Client Hedge Funds to Allow for**
 8 **Rampant Manipulation of ECD Stock**

9 23. The manufacture of solar panels is a capital-intensive industry and, in 2008, ECD
 10 needed to raise money so that it could boost production and meet a growing demand for its
 11 products.

12 24. On its face, the financing scheme pitched by Credit Suisse provided ECD with
 13 financing that could be used to fund the Company's expansion. In the Convertible Note
 14 Offering, ECD would raise \$316 million through the sale of Notes bearing a 3% coupon due in
 15 June 2013. Each individual Note had a face value of \$1,000 and could be converted into 10.892
 16 shares of ECD stock. At this conversion rate, a holder of the Convertible Note would be paying
 17 \$91.80 for each share of ECD stock. At the time of the Offering, the price of ECD stock was
 18 approximately \$72, so a holder of a Convertible Note would not have an incentive to convert a
 19 Note into ECD stock unless the price of ECD stock rose significantly, to at least be greater than
 20 \$91.80.

21 25. Under the terms of the Share Lending Agreement between Credit Suisse and
 22 ECD, Credit Suisse ran the program that allowed hedging of the Convertible Notes. ECD
 23 transferred the shares to Credit Suisse so that it could lend out the shares. Credit Suisse
 24 covenanted in the Share Lending Agreement that it would use the ECD stock "solely for the
 25 purpose of directly or indirectly (y) facilitating the sale and the hedging of the Convertible Notes
 26 by the holders thereof or, (z) with the prior written consent of the Lender, facilitating the sale and
 27 the hedging of any additional convertible securities which the Lender may issue from time to
 28 time by the holders thereof."

1 26. “Hedging” does not involve rampant short selling. Rather, an investor seeking to
2 hedge a convertible bond will short only the number of shares necessary to protect against the
3 downside risk to the notes created by swings in the equity price of the underlying stock, thereby
4 creating a market neutral position. The appropriate number of shares necessary to do this is
5 called the “hedge ratio.” Typically, when, as here, the market price of the underlying stock is
6 substantially below the conversion price, the necessary hedge ratio is less than 50 percent of the
7 number of shares that a note can be converted into. *See, e.g.*, Thoma, Beat, “Convertible Bonds
8 – Strategies and Concepts,” Fisch Asset Management (2013). Moreover, the hedge ratio declines
9 as the price of the underlying stock goes down because under these circumstances the convertible
10 note behaves more like a bond and less like a stock. For this reason, an investor pursuing a
11 strategy of hedging an investment in convertible notes will actually start buying the stock of a
12 company when the price of the stock declines, taking downward pressure *off* the stock and
13 creating buy-side demand that would support the price of the stock. In short, the interests of an
14 investor in convertible notes engaging in short sales as part of a hedging strategy are aligned with
15 those of the underlying company’s shareholders because both are “long” on the Company, that
16 is, both are betting on the Company and hoping for its profitability. Thus, an investor in a
17 convertible note with a share hedge hopes to make money by virtue of an increase in the price of
18 the stock above the conversion price, which would allow the noteholder to convert the note into
19 stock at a profit.

20 27. In view of the foregoing, an investor in ECD’s Convertible Notes pursuing a
21 legitimate hedging strategy during the Class Period would have only needed to short a minimal
22 number of ECD shares per Note to achieve a proper hedge because the market price of ECD
23 stock was substantially below the conversion price.

24 28. Rather than operating the Share Lending Agreement solely to allow “hedging” as
25 had been represented to investors and as it had agreed to do, however, Credit Suisse permitted
26 the hedge funds that purchased the Convertible Notes to borrow substantially all of the shares in
27
28

1 the pool and engage in rampant short selling of ECD stock far beyond the volume of selling
2 necessary to any legitimate hedging strategy.

3 29. In fact, the tandem offering of Convertible Notes and Stock was part and parcel of
4 a scheme designed to allow hedge funds to manipulate ECD stock for huge profits. The scheme
5 manipulated the market for ECD stock by eliminating the high borrowing costs that would
6 normally deter massive short selling. To effectuate a short sale, an investor normally has to
7 borrow the stock from a third party and pay interest on that loan. However, the scheme hatched
8 by Credit Suisse and the hedge funds eliminated this cost by allowing the hedge funds to borrow
9 common stock virtually for free. Whereas a short seller ordinarily may have to pay a significant
10 percentage of the value of a stock that is difficult to borrow (such as one where the share price is
11 declining as was the case with respect to ECD), *see, e.g.*, D'Avolio, Gene, "The Market For
12 Borrowing Stock," Journal of Financial Economics 66 (2002), the borrowing cost to the hedge
13 funds pursuant to the Share Lending Agreement was just one cent per share. Thus, whereas it
14 would have cost the hedge funds millions of dollars a year to borrow the roughly 3.4 million
15 ECD shares loaned pursuant to the Share Lending Agreement, the borrowing cost was just
16 \$34,000.

17 30. Furthermore, the Convertible Notes practically eliminated the risk of short
18 squeezes associated with aggressive short positions. In a normal situation, a short seller can
19 suffer potentially unlimited losses because there is no limit to how high the price of a stock that
20 has been shorted can rise. The Convertible Notes eliminated this risk because in the event that
21 the price of ECD stock did rise, a hedge fund could simply convert the Note into shares of ECD
22 stock to cover their position. Each Note could be converted into 10.8932 shares of ECD. So a
23 hedge fund could short up to this number of shares without running any risk that the price of
24 ECD stock would go up and cause the hedge fund to lose money on its short position. This
25 conversion right acted as an insurance policy on the hedge funds' shorting.

26 31. Through these arrangements, Credit Suisse created a perfect "heads I win, tails
27 you lose," investment vehicle to sell to hedge funds. The dramatic extent to which Credit Suisse
28

rigged the game is shown in the below chart, which depicts investment returns for a hypothetical hedge fund that purchased a single Convertible Note and who sold short 10.8932 shares, the number of ECD shares that the Note could be converted into:

Investment Returns for Convertible Noteholder Shorting 10.8932 Shares

Background Terms

ECD Stock Price: \$72
 Conversion Price: \$91.80
 Note Face Value: \$1000
 Interest Rate on Notes: 3%
 Total Interest on Notes Through Maturation: \$150
 Maturation Period: 5 years

The Transaction

Purchase 1 Note on June 15, 2008 with 3% discount: - \$970
 Sell short 10.8932 shares at \$72: + \$784
 Net investment: \$185

Investment Returns Based on Stock Price of ECD Stock at Maturity

Stock Price	\$.02	\$10	\$40	\$70	\$91.80	\$150
Initial Investment	-\$185	-\$185	-\$185	-\$185	-\$185	-\$185
Cash paid by Noteholder to cover Short	-\$22	-\$109	-\$436	-\$763	-\$1000	\$0 (short covered through conversion right in Note)
Proceeds paid to Noteholder from Redemption of the Note	\$1000	\$1000	\$1000	\$1000	\$1000	\$0 (note converted)
Interest paid to Noteholder on Note	\$150	\$150	\$150	\$150	\$150	\$150
Net Cash Flow from Investment (a sum of the preceding four rows)	\$965	\$856	\$529	\$202	-\$35	-\$35
Net Investment Returns (Net Cash Flow/ Initial Investment)	521%	463%	285%	109%	-19%	-19%

32. As demonstrated by the above chart, the manipulative scheme created by the tandem package of the Convertible Note and Stock Offerings amounted to a powerful, largely risk free, downward bet against ECD stock. Contrary to a true “hedge” in which the interests of shareholders and noteholders are aligned, the opposite was true pursuant to Defendants’ manipulative scheme. In fact, the hedge funds’ investment in the Convertible Notes was more profitable the further ECD’s stock price declined. As shown in the above illustration, a hedge fund that buys a Convertible Note with a face value of \$1,000 for \$970 (there was a 3 percent discount), but then shorts 10.8932 shares of ECD stock trading at \$72, receives back proceeds of \$784.31. If, for example, the stock price declines to \$0.02, the investment return is a whopping 519% on the initial investment, with almost all of the profit coming from the short sales, the difference between \$72 and \$.02 multiplied by 10.892. By contrast, in the event ECD’s stock price rises significantly, the value of the investment actually declines 19%. As this example illustrates, employing a hedge ratio in excess of 50%, as the hedge funds did here is not a market neutral “hedge” against the downside risk in the Convertible Notes. To the contrary, the short sales were the primary investment objective, with the Convertible Notes being used as a way to remove the risks traditionally associated with short sales.

33. Moreover, somewhat counterintuitively, these massive profits would accrue even if Credit Suisse and the hedge funds drove ECD into bankruptcy, as ultimately occurred. ECD was a capital-intense Company whose assets allowed for a substantial recovery on the Convertible Notes in bankruptcy. Thus, even if the bankruptcy only paid fifty cents on the dollar, an investor in the Note-short sale scheme would still double its money.

34. The investment returns for a proper “hedge” on a Convertible Note would have looked quite different.

Investment Returns for Convertible Noteholder Shorting 5.4466 Shares

Background Terms

ECD Stock Price: \$72
 Conversion Price: \$91.80
 Note Face Value: \$1000

Interest Rate on Notes: 3%

Total Interest on Notes Through Maturation: \$150

Maturation Period: 5 years

The Transaction

Purchase 1 Note on June 15, 2008 with 3% discount: - \$970

Sell short 5.4466 shares at \$72: + \$392

Net investment: \$578

Investment Returns Based on Stock Price of ECD Stock at Maturity

Stock Price	\$.02	\$10	\$40	\$70	\$91.80	\$150
Initial Investment	-\$578	-\$578	-\$578	-\$578	-\$578	-\$578
Cash paid by Noteholder to cover Short	-\$11	-\$55	-\$218	-\$381	-\$500	\$817
Proceeds paid to Noteholder from Redemption of the Note	\$1000	\$1000	\$1000	\$1000	\$1000	\$1634 (the Note is converted into 10.8932 shares at \$150 per share)
Interest paid to Noteholder on Note	\$150	\$150	\$150	\$150	\$150	\$150
Net Cash Flow from Investment (a sum of the preceding four rows)	\$572	\$517	\$354	\$191	\$72	\$389
Net Investment Returns (Net Cash Flow/ Initial Investment)	99%	89%	61%	33%	12%	67%

35. As shown by the above chart, the returns overall are far more modest for a hedging strategy, though still attractive.

36. Moreover, in contrast to the scenario in which an investor shorts 10.892 shares per note, an investor applying a proper hedge would likely not profit if ECD were driven into a bankruptcy. For example, if the price of ECD went to \$.02 and the ECD went into bankruptcy, with the Notes paying 50 cents on the dollar through the bankruptcy estate, an investor having a hedge of 5.4466 shares would make almost no return, or could potentially even lose money if the bankruptcy occurred in the first two years after the Note was purchased.

C. Credit Suisse Misled ECD Investors Concerning the Purpose, Nature and Effect of the Financing Scheme It Had Implemented

37. Credit Suisse intentionally and knowingly caused the Common Stock Prospectus and Convertible Notes Prospectus to include materially false and misleading statements that concealed the true purpose of the financing scheme.

38. The Prospectuses falsely represented to ECD investors (as Credit Suisse falsely represented to ECD) that the purpose of the simultaneous Stock and Convertible Note Offerings was only to allow Convertible Note investors to “hedge” their investments in the Convertible Notes. Similarly, the Convertible Note Prospectus stated that an affiliate of the underwriter “has agreed to use the borrowed shares to facilitate the establishment by investors in the notes, and certain other of our securities, of hedge positions in such securities.”

39. The Common Stock Prospectus likewise stated that:

We will not receive any proceeds from the sale of the borrowed shares in this offering, but we will receive a nominal lending fee of \$0.01 per share from CSI for the use of these shares. CSI will receive all the proceeds from the sale of the borrowed shares, and it has agreed to use the borrowed shares to facilitate privately negotiated transactions or short sales by which investors hedge their investments in the notes...

40. These disclosures were entirely false and misleading because they did not disclose (i) that Credit Suisse had designed the Offerings to allow hedge funds to make massive negative bets against ECD stock without the risks normally associated with short sales, (ii) that Credit Suisse was on both sides of the offerings, simultaneously selling the stock and Notes to investors while soliciting hedge funds to make giant bets against the stock, (iii) that Credit Suisse knew from its solicitation conversations that hedge funds intended to and would make huge bets against ECD stock, not merely place short sales to “hedge” against downside risk on the Convertible Notes, (iv) that these huge negative bets would act as an anchor on the price of ECD stock, dragging it inexorably downward to the detriment of ECD shareholders, and (v) that the downward movement of ECD’s stock price would not be the result of market forces but the

1 inevitable result of the market manipulation perpetrated by Credit Suisse and its client hedge
2 funds.

3 41. As stated in the Stock Offering Prospectus, in advance of the offering, Credit
4 Suisse “solicited indications of interest, based on the purchase price negotiated with those
5 potential purchasers, from convertible notes investors seeking to establish a hedge position” and
6 “established a ‘clearing price’ for a number of borrowed shares at which both purchasers of our
7 common stock were willing to purchase borrowed shares offered hereby and investors in our
8 convertible notes were willing to establish hedge positions.” Thus, Credit Suisse knew in
9 advance of the Offerings how hedge funds planned to exploit the financing scheme to make large
10 sales of ECD stock.

11 **D. The Scheme Launches, Causing ECD Stock to Plummet**

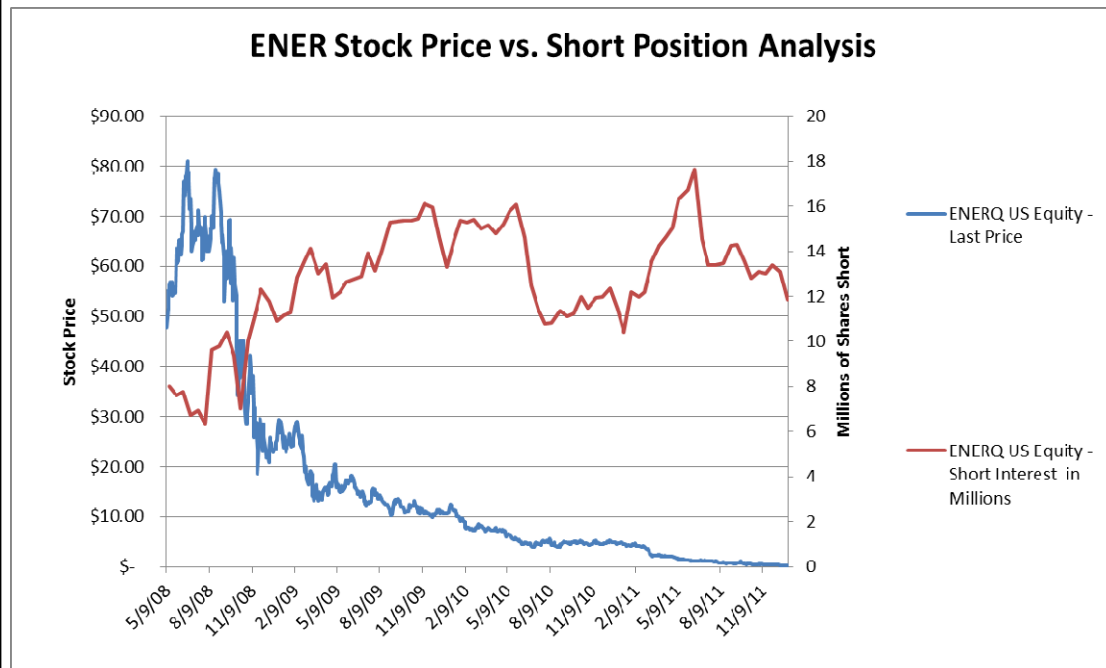
12 42. The twin offerings of Convertible Notes and Stock occurred on June 18, 2008 and
13 ECD provided Credit Suisse with 3,444,975 shares to use for short sales to “hedge” against
14 investment in the Convertible Notes. As was later revealed in ECD’s bankruptcy filing, Credit
15 Suisse lent almost all of these shares out for short sales, retaining less than 200,000 shares. This
16 volume of short sales was highly material. Around the time of the offering, the short interest was
17 approximately 6.7 million shares, so that the additional 3.2 million shares shorted through this
18 scheme represented an increase of roughly 48 percent in the short interest.

19 43. Given the volume of shares loaned by Credit Suisse for short sales, it is clear that,
20 contrary to the misrepresentations in the Prospectuses, investors in the Convertible Notes were
21 making far more short sales than necessary to hedge their positions in the Convertible Notes.
22 With approximately 3.2 million shares shorted and only 316,250 Convertible Notes sold,
23 investors were shorting more than 10 ECD shares per Note on average. At these ratios, 10+
24 shares shorted per Note, the shares were not a hedge. As explained above, given ECD’s stock
25 price, a hedging strategy would have translated into about half as much shorting, roughly 5.5
26 shares or less shorted per Note. Rather than a hedge, and as depicted in paragraph 31, the
27 combined investment in a Convertible Note with a 10+ share shorted per Note was a highly
28

negative bet against ECD stock, which had the effect of driving down ECD stock and returning huge profits to the short selling hedge funds.

44. In fact, it is likely that many of the hedge funds who participated in this scheme shorted far larger amounts of ECD stock. A review of Energy Conversion's 13F filings reveals that some of the investors in the Convertible Notes were small investors or companies that would not have participated in the aggressive manipulation described herein. For example, insurance companies and investment banks held some of the Convertible Notes. Excluding these types of investors from the pool shows that a smaller pool of hedge funds, holding approximately 180,000 Convertible Notes, were likely responsible for much or all of the short sales.

45. Reflecting these facts, after the June 18, 2008 public offering, the short volume steadily rose to more than double what it had been on the date of the offering and the price of ECD stock predictably collapsed.



1 46. The sharp increase in the short interest was a problem for ECD because ECD
2 stock was the “currency” used by the Company to secure financing and run its business. Thus,
3 the sharp decline in the value of ECD stock inhibited ECD’s ability to continue to operate.

4 47. By February 14, 2012, when ECD filed for bankruptcy protection, the short
5 attacks caused the stock price that had been trading at \$72 per share to collapse completely.

6 **V. CLASS ALLEGATIONS**

7 48. Plaintiffs bring this action as a class action pursuant to Federal Rules of Civil
8 Procedure 23(a) and 23(b)(3) on behalf of a Class consisting of all those who purchased or
9 otherwise acquired ECD stock between June 18, 2008 and February 14, 2012, inclusive, (the
10 “Class Period”) and who were damaged thereby.

11 49. The members of the Class are so numerous that joinder of all members is
12 impracticable. Throughout the Class Period, ECD’s stock was actively traded on NASDAQ, an
13 efficient market. While the exact number of Class members is unknown to Plaintiffs at this time,
14 it can be ascertained through appropriate discovery. On information and belief, Plaintiffs allege
15 that there are at least hundreds of members in the proposed Class.

16 50. Plaintiffs’ claims are typical of the claims of the members of the Class, as all
17 members of the Class are similarly affected by Defendants’ wrongful conduct in violation of the
18 Federal securities laws complained of herein.

19 51. Plaintiffs will fairly and adequately protect the interests of the members of the
20 Class and have retained counsel competent and experienced in securities class actions.

21 52. Common questions of law and fact exist as to all members of the Class and
22 predominate over any questions solely affecting individual Class members. Among the questions
23 of law and fact common to the Class are:

- 24 a. Whether the Federal securities laws were violated by Defendants’
25 conduct or statements as alleged herein;

1 b. Whether statements made by Defendants to the investing public
2 during the Class Period misrepresented material facts about ECD and the offering;
3 and

4 c. To what extent the members of the Class have sustained damages,
5 and the proper measure of damages suffered.

6 53. A class action is superior to all other available methods for the fair and efficient
7 adjudication of this controversy since joinder of all members is impracticable. As the damages
8 suffered by individual Class members may be relatively small, the expense and burden of
9 individual litigation makes it impossible for Class members to redress individually the wrongs
10 done to them. Furthermore, there will be no difficulty in the management of this action as a class
11 action in this Court.

12 54. Plaintiffs are entitled to a presumption of reliance under the fraud on the market
13 doctrine, first set forth in *Basic, Inc. v. Levinson*, 485 U.S. 224 (1988) for the following reasons:

14 a. ECD's publicly traded securities were actively traded in an
15 efficient market on NASDAQ during the Class Period;

16 b. ECD was a regulated issuer and filed periodic reports with the
17 SEC;

18 c. ECD regularly communicated with public investors via established
19 market communication techniques;

20 d. The market reacted to public information disseminated by ECD
21 and its underwriters;

22 e. The material misrepresentations and omissions alleged herein
23 would tend to induce a reasonable investor to misjudge the value of ECD's
24 shares; and

25 f. Without the knowledge of the misrepresented or omitted material
26 facts alleged herein, Plaintiffs and other Class members purchased ECD securities
27
28

1 between the time Defendants misrepresented or failed to disclose material facts
2 and the time ECD filed for bankruptcy protection.

3 **COUNT I**

4 **(Violation of Section 10(b) of the Exchange Act and Rule 10b-5**
5 **Promulgated Thereunder Against All Defendants)**

6 55. Plaintiffs incorporate the foregoing allegations as if fully set forth herein.

7 56. During the Class Period, Defendants carried out a plan which was intended to,
8 and did, (a) deceive the investing public, including Plaintiffs and the Class; and (b) artificially
9 drive down the price of ECD stock.

10 57. Defendants (a) employed devices, schemes, and artifices to defraud; (b) made
11 untrue statements of material fact and/or omitted to state material facts necessary to make the
12 statements not misleading; and (c) engaged in acts, practices, and a course of conduct which
13 operated as a fraud and deceit upon the purchasers of ECD securities in violation of §10(b) of the
14 Exchange Act and Rule 10b-5. Defendants are sued as primary participants in the wrongful and
15 illegal conduct charged herein.

16 58. Defendants, individually and in concert, directly and indirectly, by the use, means
17 or instrumentalities of interstate commerce and/or of the mails, engaged and participated in a
18 continuous course of conduct to conceal the adverse material information as specified herein.

19 59. Defendants' liability arises from the fact that they developed and engaged in a
20 scheme to manipulate the price of ECD common stock, were privy to and participated in the
21 creation of the Prospectuses, and were aware of the dissemination of information to the investing
22 public which they knew or recklessly disregarded was materially false and misleading. Further,
23 Defendants' conduct itself as an underwriter was deceptive.

24 60. Defendants had actual knowledge of the misrepresentations, omissions and
25 deceptive conduct alleged herein, or acted with reckless disregard for the truth. Defendants' acts
26 were done for the purpose and effect of concealing the scheme alleged herein from the investing
27 public, and to artificially drive down the value of ECD stock.

61. By virtue of the foregoing, Defendants have violated §10(b) of the Exchange Act, and Rule 10b-5 promulgated thereunder.

62. As a direct and proximate result of Defendants' wrongful conduct, Plaintiffs and members of the Class suffered damages in connection with their respective purchases and sales of ECD publicly traded securities during the Class Period.

COUNT II

**(Violation of Section 9 of the Exchange Act
Against All Defendants)**

63. Plaintiffs incorporate the foregoing allegations as if fully set forth herein.

64. Defendants violated §9 of the Exchange Act in that, together with the hedge funds with which they conspired, they engaged in a scheme to depress the price of ECD stock and induce the sale of ECD stock by others. Further, through their dissemination of false statements in the Stock and Convertible Note Prospectuses, Defendants misled investors concerning the nature of their actions and its effect on ECD stock.

65. As a direct and proximate result of Defendants' wrongful conduct, Plaintiffs and members of the Class suffered damages in connection with their respective purchases and sales of ECD publicly traded securities during the Class Period.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for relief and judgment, as follow:

A. Determining that this action is a proper class action under Rule 23 of the Federal Rules of Civil Procedure;

B. Awarding compensatory damages in favor of Plaintiffs and the other members of the Class against all Defendants for all damages sustained as a result of Defendants' wrongdoing, in an amount to be proven at trial, including interest thereon;

C. Awarding Plaintiffs and the Class their reasonable costs and expenses incurred in this action, including counsel fees and expert fees; and

D. Such other and further relief as the Court may deem just and proper,

JURY TRIAL DEMAND

Plaintiffs hereby demand a trial by jury

SCOTT+SCOTT, Attorneys at Law, LLP

/s Hal D. Cunningham

Hal D. Cunningham

707 Broadway, Suite 1000

San Diego, CA 92101

Telephone: 619-233-4565

Facsimile: 619-233-0508

Email: hcunningham@scott-scott.com

Deborah-Clark Weintraub

Joseph P. Guglielmo

Thomas L. Laughlin IV

SCOTT+SCOTT, Attorneys at Law, LLP

The Chrysler Building

405 Lexington Avenue, 40th Floor

New York, NY 10174

Tel: (212) 223-6444

Fax: (212) 223-6334

Email: dweintraub@scott-scott.com

jguglielmo@scott-scott.com

tlaughlin@scott-scott.com

LEWIS & ROBERTS, PLLC

Gary V. Mauney

One Southpark Center

6060 Piedmont Row Drive South, Suite 140

Charlotte, NC 28287

Tel: (704) 347-8990

Fax: (704) 347-8929

garymauney@lewis-roberts.com

James A. Robert III

3700 Glenwood Avenue, Suite 410

Raleigh, NC 27612

Tel: (866) 322-9873

Fax: (919) 981-0199

JimRoberts@lewis-roberts.com

Counsel for Lead Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on February 3, 2014, I caused the foregoing to be electronically filed with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the email addresses denoted on the Electronic Mail Notice List.

I certify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed this 3rd day of February, 2014 at San Diego, California.

/s/ Hal D. Cunningham

Hal D. Cunningham

SCOTT+SCOTT, ATTORNEYS AT LAW, LLP

707 Broadway, Suite 1000

San Diego, CA 92101

Telephone: 619-233-4565

Facsimile: 619-233-0508

Email: hcunningham@scott-scott.com